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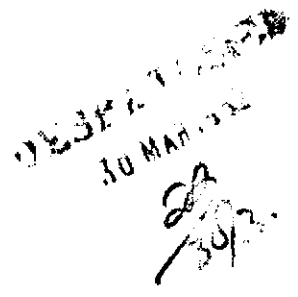

(SUBJECT.)

*To be filled in in the case of permanent records

RP. 111
A 1009

Ref.A3-No.654-32. South Kanara Collector's Office,

Mangalore, 13th March 1932.

From

Khan Bahadur J. Hussain, Bar-at-Law,

Collector of South Kanara.

The Secretary to the Board,

Land Revenue & Settlement,

Madras.

Sir,

Suits - Puttur - District Munsiff's Court - O.S.No.8/32 Allowances - Tasdik - Arrears due to Biddukallu Adishwar Basti Sale of land - Karaya village - S.No.2/7 - Delivery of possession.

******

I enclose a translation of the plaint in the above suit, which is for the delivery of possession by Government of S.No.2/7 of Karaya village, Puttur Taluk, purchased by the Plaintiff at Court auction and certain other reliefs.

2. The plot in question forms portion of Panjikudel Narayana's estate, which was escheated to Government so far back as 1926.- please see B.P.Mis.No.790, dated 8th April 1926. It is now in the actual possession of Government through their tenant Jinnappa Pujari, the 1st Defendant. When the escheat proceedings were in progress, i.e., about two years after the notice proposing the escheat of the property to Government and inviting objections thereto was published in the District Gazette, dated 24th October 1924, one Pammanna Shetti, the Plaintiff's predecessor-in-office filed a suit, O.S.No.274/26 on the file of the District Munsiff, Puttur, against one Perji Venkatramanaya, who then enjoying the property, for the recovery of certain arrears of tasdik due to the institution from the estate. This Venkatramanaya who, in reality, had no sort of right, title or interest in the property, admitted the plaint claim and allowed a decree to be passed. Though the decree (a

copy of which will be found at pages 35 to 37 of my office file D.Dis.6890-30 enclosed) was thus passed on 15-6-1926, the Plaintiff's predecessor-in-office remained quiet for three years, at the end of which he took execution and brought the suit plot to sale and purchased it himself on 6-6-1929. Finally its symbolic possession was taken on 26-12-1929 by the present Plaintiff who succeeded Pammanna Shetti to the office of trustee. All this happened behind the back of Government without even giving a notice to the Collector. (E)

3. Meanwhile, Government filed a suit, O.S.No.67/26 on the file of the Sub Court, Mangalore, for the recovery of possession of the escheat property against Venkatramanaya, referred to above and 14 others and got a decree on 24-9-1929. Actual possession of the property on Government's behalf was taken on 10-12-1929 and the plot in question, along with certain other plots was leased to the present 1st Defendant. It will thus be seen that Government took actual possession of the property 16 days prior to the date of delivery of its symbolic possession to the Plaintiff. For the reasons given in the Mangalore Government Pleader's letters, dated 2-8-1930 and 29-8-1930, which will be found among the records of the file quoted above, the 1st Defendant was instructed not to attorn to the Plaintiff or any other person on his behalf and to resist delivery. Plaintiff's suit notice was also subsequently recorded. judgment-(F) pp 21-22(E) * pp 31-32(E) * pp 1-3 & (G) p 5-(G)

4. I enclose copies of the Puttur Pleader's letter No. 355, dated 8-2-1932 and the Mangalore Government Pleader's Ref.No.12/32, dated 6-3-1932. I agree with the Government Pleader, Mangalore in this opinion and request that the Board may be pleased to sanction the defence of the suit and approve the draft written statement (enclosed) prepared by the Puttur Vakil and certified by the Government Pleader to be in order. p 7 below pp 9-10 below pp 5— 6 below

5. The suit is dated 5-1-1932. A copy of the plaint with summons was received by me on 17-1-1932. The suit stands posted to 12-4-1932. I enclose the records noted in

the margin for reference.

1. Collector's file D.Dis.6890-30.
2. Do. D.Dis.3704-31.
3. Copy of judgment in O.S.67/26, of the Sub Court, Mangalore.
4. District Gazette (English copy) dated 24-10-1924.

A Krishnamurthi 15/3/32
For Collector.

15.3.32.

L.D'S.15/3.

5

In the Court of the District Munsif of Puttur.

O.S. 8/32.

Biddukallu Adishwar Swami ... Plaintiff.

Jinnappa Pujari and another ... Defendants.

Written statement of 2nd defendant under Order 8 Rule 1 Civil Procedure Code of 1908.

The 2nd defendant states as follows:-

1. The plaintiff's suit is unjust, frivolous and unsustainable at law.

2. This defendant admits that the tasdik amount Viz. Rs. 8-12-9 due annually to the plaint institutions was made payable out of the property appertaining to S.Nos. 2/1.2.3.4.5.7 to 12 of Karaya village, under the assignment system, as alleged in para 1 of the plaint.

3. The plaint property, along with other properties was, after due publication of notice in the District Gazette in October 1924, declared as escheat to Government on 8-4-1926 after which, this defendant filed a suit O.S.67/1926 in the Sub-Court, Mangalore, against one Perje Venkatramanaya and others who were in wrongful possession, for recovery of possession of properties with mesne profits, which suit was decreed on 24-9-1929 and in execution of this decree, this defendant obtained delivery of the properties, including the plaint property, through court on 10-12-29.

4. This defendant was not aware of any tasdik amount being in arrears or of the suit O.S.274/1926 on the file of this court, filed by plaintiff against Perje Venkatramanya and does not admit the validity of the claim or the decree therein. The said decree was obtained by plaintiff fraudulently and in collusion with Perje Venkatramanaya; the defendant therein, who seems to have admitted the claim and confessed judgment. The decree in O.S. 274/26 obtained by plaintiff without impleading this defendant and with knowledge of the escheat proceedings and the valid claim of this defendant is invalid and not binding against the property or this defendant. The plaintiff acquired no right under the said decree or court-sale or the

the alleged delivery under it. The said delivery is illegal and cannot affect this defendant.

5. This defendant denies that Perje Venkatramanaya who was a trespasser and in wrongful possession, effectively represented the estate as alleged in the plaint.

6. The plaintiff at the time of suit O.S. 274/26 knew or must be deemed to have known about the escheat proceedings and the valid title of this defendant to the plaint property

7. This defendant denies that there was any negligence on the part of this defendant and that he knowingly allowed the property to be sold as alleged in para 6 of the plaint.

8. The Plaintiff is not entitled to possession or mesne profits, as claimed in the suit.

9. The mesne profits claimed are excessive.

10. After this defendant got delivery of the plaint property it was leased out to 1st defendant who is in possession and enjoyment as chalageni tenant of this defendant.. The 1st ----- defendant rightly refused to pay any rent to the plaintiff who is not entitled to the same.

11. The plaintiff's suit is barred by limitation.

12. The plaintiff is not entitled to any relief.

13 All other allegations not expressly admitted herein, are denied.

14. The suit may therefore be dismissed with costs.

Amalanand 13/3

South Kanara Collector's Office,
Mangalore, dated 13th March 1932.

For Collector.

15.3.32

7

Letter from M.R.Ry. B. Achyuta Baliga Avl., B.A.,B.L.,
Pleader, Puttur.
To the Collector of South Kanara, Mangalore.
Dated 8-2-32 No.355.

O.S.8/32 - Puttur Munsif's court - Draft written statement.

The draft written statement prepared by me is enclosed for approval. There is only a question of law involved in this case viz., whether the decree in O.S.274/26 is bonafide, valid and binding against the property and the Government. That suit was filed for recovery of the tasdik amount in arrears due from the property. I think, it will not be seriously disputed that the tasdik amount was in arrear. In that case there was no false claim for which a decree was passed. The fact that Perje Venkatramanaya the ~~the~~ defendant therein admitted the claim, becomes therefore immaterial. The next point is ----- whether the suit was filed and decree obtained against the proper person in other words whether Perje Venkatramanaya truly and effectively represented the property. The suit O.S. 274/26 was filed on 1-4-1926 while the order of escheat was dated 8-4-1926. The Government filed the suit O.S.67/26 sub-court somewhere in July 1926. It may be argued by the other side, that until the decision in O.S.67/26 establishing the title of the Government Perje Venkatramanaya who was in possession, though under an invalid alienation as found ---- afterwards was the proper person to be made a party defendant. In this connection, the definition of 'legal representative' in section 2 (11) Civil Procedure Code may be read. So also the rulings in 30 Law Weekly pages 778, 862. Much depends upon proof of fraud and collusion and want of bonafides, for ------ successfully attacking the decree. There are circumstances to show that the decree was the out-come of collusion and the plaintiff deliberately refrained from making Government a party in order to pocket the property.

2. The records sent to me are returned.

(True copy) 15/3

For Collector.
15.3.32

9

Letter-from M.R.Ry., Dewan Bahadur B. Mahabala Hegde, Avl., B.A., B.L., Advocate, Government Pleader & Public Prosecutor, Bangalore.
To-the Collector, South Kanara.
Dated-Bangalore, 6th March 1932.
No.- Ref.No.12/1932.

Reference:- Suits - Puttur - District Munsif's Court - O.S.No.8/32.

Your letter Ref.A3-No.654-32, dated 13-2-1932.

The draft written statement is in order and may be approved. In view of the notification dated 5-10-1924, I think that it is open to the Government to contend, that the decree in O.S.274/26 and the court sale therein are not binding against Government, as the Plaintiff must be deemed to have had notice of the said notification, and must have made the Government a party to the suit. Though a formal declaration of escheat was made long afterwards, yet, I am of opinion, that the title of Government is good, as against every party, who has not proved his title, within 6 months of the date of the said publication (5-10-1924) after which the title of the Government must be deemed to be absolute.

On the question, whether Perji Venkatramanaya could be deemed to be a proper representative under Section 2 (11) of C.P.C., it can be contented that he is not, as the Government must be deemed to be such, at any rate, after 6 months, from the date of the notification (5-10-1924) which period had expired, when O.S.274/26 was filed. Further on the question, whetner the Government or Perji Venkatramanaya must be deemed to be a legal representative, for the purpose of being made a party to O.S.274/26, the question of Bona-fides of Venkatramanaya's claim, could not be altogether ignored. The Gazette notification of 5-10-1824 may be filed on behalf of the Government and the decree in O.S. 274/26, could be attacked on the ground of want of bona

18

fides and collusion.

Connected papers are herewith returned.

True Copy.

A Krishnamurti 15/3

For Collector.

15.3.22

M.D'S.15/3.

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(Under Section 26 of Civil Procedure Code)

In the Court of the Dt. Munsif of Puttur.

O.S.No.8/32.

Between:

Biddukallu Adhishwari Swami, represented by its trustee, Nemiraja Shetty, grand son of Pular Deju Shetty, Wargdar, ----- residing in Hosamogaru of Tekkar village. — Plaintiff.

a n d

1. Jinnappa Pujari, nephew of Nalur Singa Pujari, residing in Panjikudelû of Karaya village.
2. The Secretary of State for India in Council represented by the Collector of South Kanara, Mangalore. — Defendants.

The plaintiff above named begs to state as follows:-

1. The plaintiff was permitted to recover the annual tasdik amount of Rs. 8-12-9 according to the beriz deduction system from S.No.2/1.2.3.4.5.7 to 12 of Karaya village.

2. As neither Krishnaya the former enjoyer of the above land nor after him, his son nor for the matter of that Perji Venkatramanaya, who derived the right from the latter failed to pay the tasdik due to the plaintiff institution, Pammanna Shetty, the then trustee filed in this court a suit O.S.No.274/26 and obtained a decree against the said Perji Venkatramanaya, who was then in possession and enjoyment of the lands and he purchased it at court auction held in execution of the decree on behalf of the plaintiff.

3. After that, the present trustee of the plaintiff, obtained possession of the land under rule 96 of Order 21 C.P.C. from the 1st defendant who was enjoying the land on chalgeni right

4. As the 1st defendant, who was bound to pay rent to the plaintiff refused to do so, contending that the 2nd defendant was the owner of the plot, the plaintiff was obliged to send a

registered notice to the Collector of South Kanara on behalf of the 2nd defendant asking him to deliver possession of the land but he did not choose to give a reply and is silent though he received the notice.

5. It is understood that Mahalaxmi who gave the right of enjoyment over the land to Krishnaya, having died, the property has now come to the 2nd defendant. It is only recently that the plaintiff came to know of this fact

6. Even for the sake of argument, it is held that the said Venkatramanaya was enjoying the land merely as a representative and that the said property entirely vested in Mahalaxmi, the said Venkatramanaya was fully entitled to be decreed against and to be the defendant in respect of the said property and the court auction held in execution of the decree obtained in good faith against him is fully binding upon him. Besides the 2nd defendant could have avoided the auction sale by taking necessary precautions and paying the tasdik amount. Though they were aware of all the facts, the defendants allowed the auction to be held and as such, they have forfeited their right to raise any objection now in the matter.

7. The plaintiff is entitled to obtain possession of the property from the 1st defendant inspite of the objections of the 2nd defendant.

8. The cause of action arose in Karaya village on 26-12-29, the date of delivery of the property.

9. The relief claimed in this suit is Rs. 174-9-0

It is therefore prayed that the undermentioned property may be ordered to be delivered to the plaintiff. Relief valued at ten times the assessment at Rs. 4-11-0 per annum ... 46-14-0

Mesne profits on this for 3 years at the rate of 7 muras per annum from 6-9-29 - 21 muras at the rate of Rs. 6-12-0 per mura. .. 127-11-0

174-9-0

It is prayed that a decree and judgment may be passed for the payment to the plaintiff by the 1st defendant of futur mesne profits at the said rate, court costs and interest.

Description of the property.

S.No.2 sub-division 7, measuring 0.75 acres and assessed at Rs. 4-11-0 garden with all its appurtenances in No.151 Karaya village, Beltangady Sub-District, South Kanara District.

(Translation)

Mangalore,
15 - 3 - '32.

Huzur Cheristedar.

15.3.32

Date of Hearing 12.4.32

R. F. XXM-A-19—80,004—2-2-34.(6)

Subject.

FOR MEMBER. 1/3/32

Suits (O. Kaccara, Dutbar Shuff - O.S. 8/32 - Jaodih allaccee — Arrear - Sale fixed. Delivery of possession Defence - Sanctions

READ AGAIN B. P. No. _____ ,dated _____ 193

" " " _____ , " _____ 193

READ ALSO :—

Register No. _____. From the A 1009/32, No. _____, dated 1/3/32 193 2

" " _____, " " _____, _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. (Suits) No. 959, dated 23-3-1932

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Collector

fps-6 cf

23/3/32

23.3.32.

CERTIFIED COPY. 23 MAR 1932

To

The Collr of T. Kaccara with records for perusal

29/3/32 p3 cf

T.A